IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ROBIN and DENNY BRUNING, as parents and next friends of HEATHER BRUNING, a minor; AGGIE KUHLMAN, as mother and next friend of RACHAEL DIXON, a minor; JOEY and JAMES EVERETT, as parents and next friends of COURTNEY EVERETT, a minor, Plaintiffs, vs. CARROLL COMMUNITY SCHOOL DISTRICT; STEVE SCHULTZ, both individually and in his official capacity; LEONA HOTH, both individually and in her official capacity; JOHN DEBOLT, in his individual capacity; STEVEN KANEALY; MARK KANEALY and KENDA KANEALY, Defendants.	No. C04-3091-MWB **MEMORANDUM OPINION AND ORDER REGARDING DEFENDANT DEBOLT'S MOTION FOR SUMMARY JUDGMENT**

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I. INTRODUCTION AND BACKGROUND

A. Procedural Background

On December 7, 2004, plaintiffs Robin Bruning and Denny Bruning, on behalf of their daughter Heather Bruning, Aggie Kuhlman, on behalf of her daughter Rachael Dixon, and Joey Everett and James Everett, on behalf of their daughter Courtney Everett filed a complaint in this court against Carroll Community School District, Steve Schultz, individually and in his official capacity as the superintendent for Carroll Community School District, Rob Cordes, both individually and in his official capacity as the principal of Carroll Middle School, Leona Hoth, both individually and in her official capacity as the assistant principal of Carroll Middle School, Steven Kanealy, and his parent Mark Kanealy

and Kendra Kanealy. This lawsuit arises from the alleged sexual harassment of Heather Bruning, Rachael Dixon, and Courtney Everett by defendant Steven Kanealy and two other minor students which took place at Carroll Middle School. In Count I of their complaint, plaintiffs allege that defendants, Carroll Community School District, Schultz, in his official capacity, Cordes, in his official capacity, and Hoth, in her official capacity, violated the Equal Protection Clause of the United States Constitution by failing to protect plaintiffs Heather Bruning, Rachael Dixon, and Courtney Everett from alleged sexual harassment. In Count II of their complaint, plaintiffs allege that defendants, Carroll Community School District, Schultz, in his official capacity, Cordes, in his official capacity, and Hoth, in her official capacity, violated plaintiffs' Substantive Due Process Rights by allowing defendant Steven Kanealy and two other male students to sexually harass plaintiffs Heather Bruning, Rachael Dixon, and Courtney Everett by virtue of the police, practice and custom of the Carroll Community School District. In Count III, plaintiffs allege that defendant Carroll Community School District violated Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, by permitting the sexual harassment of plaintiffs Heather Bruning, Rachael Dixon, and Courtney Everett by male students to go unchecked. In Count IV, plaintiffs allege that defendant Carroll Community School District violated the Iowa Civil Rights Act, Iowa Code Ch. 216, by permitting the sexual harassment of plaintiffs Heather Bruning, Rachael Dixon, and Courtney Everett by male students. In Count V of their complaint, plaintiffs allege that defendants, Carroll Community School District, Schultz, in his official capacity, Cordes, in his official capacity, and Hoth, in her official capacity, violated 42 U.S.C. § 1983 by permitting plaintiffs' rights under the Equal Protection Clause and the Constitution of the State of Iowa to be violated by allowing the sexual harassment of plaintiffs Heather Bruning, Rachael Dixon, and Courtney Everett. In Count VI, plaintiffs allege that defendant Carroll Community School District was negligent in

permitting the sexual harassment of plaintiffs Heather Bruning, Rachael Dixon, and Courtney Everett by male students to occur. In Count VII, plaintiffs allege that defendant Carroll Community School District is liable for allowing on school premises the harm caused to plaintiffs Heather Bruning, Rachael Dixon, and Courtney Everett as a result of their sexual harassment at the hands of male students. In Count VIII, plaintiffs allege that defendant Carroll Community School District is liable for the harm caused to plaintiffs Heather Bruning, Rachael Dixon, and Courtney Everett as a result of the school district's failure to protect them from the sexual harassment by male students. In Count IX of their complaint, plaintiffs allege a claim for assault against defendant Steven Kanealy. In Count X, plaintiffs allege a claim for battery against defendant Steven Kanealy. In Count XI, plaintiffs allege a claim for tortious infliction of severe emotional distress against defendant Steven Kanealy. In Count XII of their complaint, plaintiffs allege a claim for negligence against defendants Mark Kanealy and Kendra Kanealy for their failure to prevent their son Steven Kanealy from harassing, abusing and assaulting plaintiffs Heather Bruning, Rachael Dixon, and Courtney Everett.

On January 26, 2005, plaintiffs filed an amended complaint in this matter in which they reasserted all twelve claims made in their original complaint. In addition, in Count XIII of their amended complaint, plaintiffs allege a slander claim against John DeBolt in his official capacity as the Juvenile Court Officer for Carroll County. Plaintiffs allege that DeBolt made oral statements to the Carroll County newspaper which were slanderous.

Defendant DeBolt has filed a Motion for Summary Judgment on plaintiffs' slander claim against him. First, in his motion, defendant DeBolt contends that the statements attributed to him, and alleged to be defamatory, are true and therefore do not support a claim of slander. Second, defendant DeBolt asserts that the statements attributed to him are protected opinion even if untrue. Third, defendant DeBolt contends that the statements

attributed to him constituted fair comment on a matter of public concern, even if the statements are later proven to be untrue. Fourth, defendant DeBolt argues that the statements attributed to him were protected by a qualified privilege. Finally, defendant DeBolt contends that the doctrine of sovereign immunity shields DeBolt from liability for his statements. Plaintiffs have filed a timely response to DeBolt's Motion For Summary Judgment.

The court heard telephonic oral arguments on DeBolt's Motion for Summary Judgment. At those oral arguments, plaintiffs were represented by Jean Pendleton of Pendleton Law Firm, P.C., West Des Moines, Iowa. Defendant DeBolt was represented by Assistant Iowa Attorney General Grant K. Dugdale.

Before turning to a legal analysis of defendant DeBolt's Motion for Summary Judgment, the court must first identify the standards for disposition of a motion for summary judgment, as well as the undisputed factual background of this case.

B. Factual Background

The summary judgment record reveals that the following facts are undisputed. Defendant John DeBolt is a resident of Carroll County, Iowa and is the Juvenile Court Officer for Carroll County. As a juvenile court officer, DeBolt's duties include holding intake hearings after juveniles have committed crimes, determining rehabilitation methods, preparing reports for the juvenile court, and tracking juveniles throughout their probation period. His duties also include making contact with schools though his school liaison officer, Mark Trullinger, who he supervises along with "trackers," or intensive home supervision managers. DeBolt reports to his primary supervisor, Alan Blair, a Juvenile Court Officer IV, in Fort Dodge, Iowa. DeBolt has worked as a juvenile court officer in Iowa for 25 years and in Missouri for two and one-half years. DeBolt was at all times

material to this lawsuit a state employee.

Mark Trullinger was hired approximately in February of 1999 by the Carroll Schools as the juvenile court liaison. Trullinger has a bachelor's degree in criminal justice administration and a master's degree in education. He is licensed in elementary and secondary counseling, and was a law enforcement officer for 20 years before taking his current position. Trullinger works in conjunction with DeBolt and considers himself to be DeBolt's "eyes and ears." Trullinger meets with DeBolt monthly and provides him with updates concerning all the children on his caseload. DeBolt alleges that Trullinger told him that he had talked to Heather Bruning, Rachael Dixon, and Courtney Everett. Trullinger, however, testified in his deposition that he never interviewed, contacted, or had any contact whatsoever with the plaintiffs in this case. Trullinger testified that DeBolt would have been aware that Trullinger did not have any sort of relationship with Heather Bruning, Rachael Dixon, or Courtney Everett and that Trullinger never really talked to the plaintiffs about any issues. Trullinger admitted in his deposition that he never performed any sort of investigative tasks with the plaintiffs and that he never met with any of Heather Bruning, Rachael Dixon, or Courtney Everett's parents.

The first incident alleged to be harassment in this case happened when Steven Kanealy grabbed Heather Bruning's breasts in a school hallway. Heather Bruning was in the seventh grade at the time. Steven Kanealy entered school that year. He, Heather Bruning and their friends would accompany one another around town. Heather Bruning considered Steven Kanealy to be her boyfriend at this time. Heather Bruning, Steven Kanealy and their friends visited Heather Bruning's house eight or nine times before this first incident. Heather Bruing visited Steven Kanealy's house regularly even after this first incident. After this first incident, Heather Bruning visited Steven Kanealy in his home even after they broke up.

During the fall of 2002, Heather Bruning visited Steven Kanealy's home about ten times. During many of these visits, Steven Kanealy touched Heather Bruning's breasts. In response to Steven Kanealy's expressed desire to bite Heather Bruning's chest, Heather "flashed him" by lifting up her shirt. This happened in Steven Kanealy's house. Both when they were dating and when they were not, Heather Bruning occasionally hit Steven Kanealy in his crotch area. Heather would hit Steven in the crotch in response to him hitting her in the crotch. When Heather took such action, Steven would respond by giving Heather a titty twister or doing something worse. In one instance, Steven lifted Heather's skirt to reveal her buttocks. Heather reacted by pushing Steven. Almost daily at school, Steven Kanealy would grab Heather's breasts and her typical reaction would be to hit him in the arm or tell him to knock it off.

During the seventh grade year, Heather Bruning did not report to the school any instances of Steven Kanealy grabbing her, biting her, spitting on her, or lifting her skirt with a stick. Heather Bruning also did not report any of these incidents to Steven Kanealy's parents when she was visiting at his house. During the fall of 2002, Heather Bruning saw Steven Kanealy grab other girls' breasts and do "titty twisters."

JL, who is not a defendant in this case, was one of the other boys who visited Heather Bruning's home, along with Steven Kanealy, during the fall of 2002. JL would also grab Heather Bruning's breasts and buttocks. During these visits in the fall of 2002, Heather Bruning alleges she asked the boys to leave more than once. Heather Bruning never told her parents about the incidents at the time.

Heather Bruning would go to friends' homes knowing the boys would be there, and would sometimes make arrangements for Steven Kanealy, JL, and CB to meet her there. Heather Bruning and Steven Kanealy exchanged gifts. At the movies, Heather Bruning would often voluntarily sit next to Steven Kanealy.

Steven Kanealy's inappropriate conduct toward Rachael Dixon began during recess at the beginning of the seventh grade year. Steven Kanealy would occasionally hit Dixon and she would respond in kind. If Steven Kanealy would not stop hitting Dixon, Dixon would eventually respond by kicking him in the groin.

Rachael Dixon never grabbed or pinched any of the boys, but did kick them in the groin area when they did something to her. For example, on the school playground, before resorting to hitting back, Dixon would first give a dirty look, try to avoid the boy, maybe say "knock it off" or "what did you do that for?" If the action happened again, Dixon would give the boy another dirty look and ask to be left alone. If the boy persisted in his actions, she would kick back at the boy in the boy's groin area. Dixon stopped hitting Steven Kanealy because "he would just keep hitting me harder, so I eventually just gave up and didn't hit him back." Plaintiffs' App. at 110, Dixon Dep. at 93. Dixon told the school counselor that "after a while we would get fed up with it and we would hit them back to defend ourselves." Plaintiffs' App. at 104, Dixon Dep. at 78.

The boys, Steven Kanealy, JL, and CB, attended parties at Rachael Dixon's house with her consent even after she had been to the school guidance counselor to complain about them. Rachael Dixon believes that her mother would have thrown the boys out if she had known about the harassment. When the boys came over to Rachael Dixon's house, she did not ask or tell them to leave. Agnes Kuhlman knew that Rachael Dixon had boys over to the Kuhlman house as guests. When the boys were at the Kuhlman house, they played outside four or five times and inside once or twice. Agnes Kuhlman saw the boys acting "rambunctious," to the point where she once asked them to leave, but she did not at any time see them doing anything sexually inappropriate to the girls. Agnes Kuhlman knew her daughter was still hanging out with the boys during eighth grade, 2003, but received no reports of any of the boys engaging in inappropriate conduct. Agnes

Kuhlman gave her daughter permission to invite only the girls, but not the boys, to her home while Agnes Kuhlman was away. When this occurred, Rachael Dixon would angrily slam down the telephone. Agnes Kuhlman knew that her daughter had visited Steven Kanealy's residence. Rachael would visit Steven Kanealy's house because, after school, she and Heather Bruning would be hanging out and Heather would go to visit Steven.

Rachael Dixon told her mother that Steven Kanealy would hit and kick at her, and when she hit back to defend herself, Heather Bruning and the other non-plaintiff girls would get mad at her because they were afraid of making Steven mad. After being informed of this, Agnes Kuhlman instructed Rachael to simply stay away from Steven Kanealy. However, he was later allowed to be a guest in their house again.

Heather Bruning's mother, Robin Bruning, had seen the boys hit Heather, but not in a sexual way. Robin Bruning told them that they had to calm down or she would send them home. Heather Bruning never reported any of Steven Kanealy's activities to his parents. Heather Bruning does not believe that Steven Kanealy's parents knew what was going on.

Rachael Dixon and JL were girlfriend and boyfriend for about five days. Steven Kanealy and Heather Bruning, and Courtney Everett and CB, were also considered to be in boyfriend/girlfriend relationships at this time. The couples dating involved "hanging out in a group" either at the movies or at someone's house. During the time when Courtney Everett called CB her boyfriend, he would touch her inappropriately. When Rachael Dixon attended movies with Steven Kanealy, JL and CB, she would not tell her mother whether or not the boys would be attending the movies too.

Courtney Everett never told anyone about the inappropriate touching because at the time she didn't think anything of it. Despite the fact that some of the kicks from the boys would leave marks and bruises, Courtney Everett "didn't think anything of it at the time."

In the second semester of the seventh grade, after Agnes Kuhlman relaxed her rules regarding whether Rachael Dixon could spend time with the boys, Rachael would tell her mother that she would be with the girls and Steven Kanealy, JL and CB at such sites as the movies, the library, or the local Wal-Mart store. Rachael Dixon frequently mentioned Steven Kanealy as one of the boys with whom she planned to hang out. At least once a month, Rachael Dixon would mention to her mother that she was planning to meet up with the boys. Agnes Kuhlman was aware that, during the summer between their seventh and eighth grade years, Rachael Dixon would sometimes hang out at Steven Kanealy's residence.

Rob Cordes was aware in April of 2003 that female students, including Rachael Dixon, had complained of sexual harassment. The school guidance counselor, Mrs. Watson, told Cordes that some girls came to her complaining that Steven Kanealy was calling them inappropriate names of a sexual nature, such as "sluts" and "bitches" and that they were being poked in their breasts. Steven admitted to Cordes that some of the accusations were true.

In the summer of 2003, an incident took place at the home of AA. This incident happened while Heather Bruning and Steven Kanealy were "going out." During this incident, which involved two of the boys tying Heather Bruning and another girl, KL, to a bed, the girls responded by tying the boys to the bed as well. Heather Bruning did not tell her mother that this event had occurred. Heather Bruning has seen KL, the other girl involved in the summer 2003 incident, giving Steven Kanealy "titty twisters."

Another incident occurred at Heather Bruning's birthday party, in Heather's bedroom, in January of her seventh grade year. JL and Rachael put a blanket over themselves and simulated a sex act for the group. When Steven Kanealy and his friends showed up at Heather Bruning's house to visit socially, they were welcomed. Heather

Bruning would sometimes ask the boys to leave but would later voluntarily meet up with them, either at one of their houses or elsewhere. The girls would hang out with the three boys at Wal-Mart, the movies, or when the group of boys would run into the group of girls. Even though the boys allegedly hit and kicked the girls during recess, the three female juvenile plaintiffs would still meet up with the boys later that weekend. If the girls were planning to go out by themselves and the boys called, the girls would usually tell the boys where they were going.

The middle school lunch room does not have assigned seating. Heather Bruning and her friends sat at the same table with the boys nearly every other day during the fall 2002 semester and at least once or twice a week during the spring 2003 semester. In the school's breakfast room, Heather Bruning would either choose to sit with the boys or they would choose to sit with her. She never reported any of the incidents to Mark Trullinger, Leona Hoth, or Rob Cordes. Heather tried to cope with the harassment, such as when Steven Kanealy would hit her in the crotch, by telling the boy to knock it off or she would turn and move away. If one of the boys put his foot on Heather Bruning's crotch, she would respond by putting her foot on his crotch area. Heather would sometimes laugh when doing so.

While in the seventh grade, Heather Bruning would sometimes choose to sit with Steven Kanealy on the school bus, even after the incidents of inappropriate conduct. During the seventh grade, Heather Bruning agreed to meet with Steven Kanealy at school-sponsored dances.

In October 2003, after Steven Kanealy distanced himself from the plaintiffs, JL and CB continued to sit together during lunch and play together during recess. When Steven and some of his friends were playing hacky sac, Heather Bruning and her boyfriend sat across the street and watched them. When the boys looked over, Heather and her

boyfriend would leave, but would later return. Steven Kanealy received telephone calls from several girls who asked why he was not interested in having sexual intercourse with them.

Rachael Dixon told her mother about the sexual harassment in October of 2003 because nothing was done at school that would make the boys stop. The police became involved at that point.

In the fall of 2003, Ms. Watson told Rob Cordes that some of the girls who had previously complained of harassment the previous spring, starting in April of 2003, were back and that they were alleging incidents of poking, twisting and prodding with pencils. Cordes believes that calling someone a "slut" constitutes sexual harassment. Cordes required the plaintiffs to fill out sexual harassment complaint forms in response to the incidents of poking, twisting and prodding with pencils. The boys, when questioned, admitted to Cordes some of the allegations made in those forms. During this meeting with Cordes, the boys also said the girls were engaged in inappropriate behavior as well, such as pinching and kicking in the groin. Cordes asked the boys why they had not complained of the girls' alleged conduct before that time. Cordes was confident that the boys had initiated the conduct. Cordes did not put a lot of credibility in the boys' claim that the girls had also engaged in kicking and punching. Cordes did no follow up investigation because he did not feel that the boys were being totally honest with him. Cordes had seen the boys and girls spending time with each other inside and outside of school. Heather Bruning admitted to Cordes that she had hit the boys and called Steven Kanealy an inappropriate name. When Heather told Cordes about the sexual harassment she had suffered, she also told him that she had retaliated against the boy harassing her by hitting him in the crotch and calling names, stating "if they did something to us, we'd do something back, such as hit or call names." Plaintiffs' App. at 92, Bruning's Dep.at 164. Heather never did

anything in response unless it was prevoked. Cordes thought the boys were more guilty than the girls. Cordes considers physical touching of a male student to a female student more serious than name calling. Cordes never questioned the girls about the allegations that the boys had made about the girls. Cordes never sent anyone else to question the girls about the allegations the boys were making about them. At the time of the October 2003, investigation, Cordes had no evidence, other than the boys' statements, that the girls had engaged in inappropriate behavior.

In an interview with Sergeant Fleecs, one of the boys, JL, admitted to the following: giving titty twisters at school, shoving pens and pencils up the girls' private areas, spitting at and around the girls, grabbing the girls' private areas, rubbing condoms in the faces of the girls, cutting other girls with staples, putting his hands up one girl's shirt, snapping rubber bands at the girls, punching a girl in the face, wiping his hands on his "dick" and then on the girls' faces, and trying to "finger" a girl in her genital area when she refused his advances. In another interview, with Steven Kanealy, Steven admitted to doing titty twisters but stated that another boy "did most of the stuff."

Sergeant Fleecs contacted Cordes as part of his investigation and Cordes reported to Sergeant Fleecs that the boys had admitted inappropriate behavior and had made allegations of inappropriate behavior by the girls toward them. Sgt. Fleecs's official report, dated October 13, 2003, states that Cordes said he believed the inappropriate behavior was mutual. DeBolt, as a juvenile court officer, had access to Sgt. Fleecs's official report. DeBolt relies on his school liaison officers to keep him informed of events at the school. DeBolt only visits the school every other week. DeBolt states that he assumed Trullinger kept in close contact with the girls.

Trullinger met with Steven Kanealy, JL, and CB, as well as other students on his caseload for fifteen to twenty minutes every ten days. In their meetings with Trullinger

and Cordes, the boys admitted their inappropriate conduct and indicated that what they had done to the girls was in turn done by the girls to them. One of the boys reported to Trullinger that the girls were putting their feet in the boys' crotches. Trullinger monitors the lunchroom as part of his official duties. During the course of his monitoring, Trullinger did not observe inappropriate behavior among Steven Kanealy, JL, CB, Heather Bruning, Rachael Dixon, and Courtney Everett. Trullinger informed DeBolt that according to the information that he had received, the inappropriate conduct was mutual and "back and forth" between the boys and girls.

Heather Bruning admitted to Rob Codes that she had hit the boys in the genitals and called them names such as "short dick" and "tiny dick" after she was called "pointy titties." Heather Bruning admitted to Miss Watson that she had hit the boys and called them names. Heather Bruning has called CB these names. Heather Bruning has called JL "small dick" and hit him in the crotch. Rachael Dixon admits to having called Steven Kanealy names such as "no dick" and "pencil dick."

School officials' notes from October 2003 indicate that there were incidents of inappropriate conduct both by the girls who are plaintiffs in this lawsuit and by girls who are not plaintiffs in this litigation. Heather Bruning admitted in her deposition to "pushing" the boys, "hitting them in the arm", "trying to kick them in the genitalia", "calling them names" and "putting her foot between their legs under the lunch table."

DeBolt had meetings with Officer Fleecs and school officials on December 3, 2003, December 12, 2003, and December 15, 2003. DeBolt viewed the official reports that indicated that the events were not onetime incidents. but that the children had been friends and had been acting inappropriately toward one another for some time. DeBolt was aware of the information in these files when he was interviewed by a news reporter for the Daily Times Herald. DeBolt had read the girls' statements by the time he talked to the press.

In connection with these events, DeBolt spoke with Trullinger on almost a daily basis, as well as Leona Hoth, the special education teacher, Cordes, and the police. Heather Bruning, Rachael Dixon and Courtney Everett were never identified as being a "harasser" by the school district, and the only evidence that Heather was a harasser, as far as the school district was concerned, was when she called Steven Kanealy "short dick" after he called her "pointy titties."

DeBolt admits that no one ever told him, showed him, or proved to him that what the girls said was not truthful. DeBolt never met with any of the girls and met with four or six mothers only once concerning any of the matters complained of in this lawsuit.

The girls reported in their handwritten police records that they were subjected to sexual harassment and assault at school and on school grounds. Rachael Dixon stated in the police reports that she had been subjected to titty twisters, spat at, kicked, cut with staples, punched in her upper genital area, poked in her genital areas with pencils and pens, and was called a bitch, camel toe, and "milf." Rachael also reported that the boys put their hands down their own pants and then wiped their hands on her, grabbed her and tried to make her touch them, grabbed her buttocks, tried to "depants" her, snapped her with rubber bands, tripped her, kneed her in the buttocks, used a shocking device on her and gave her "wegies."

Courtney Everett stated in police reports that she had been subjected to being called a slut and a whore, having bruises from titty twisters and being kicked, boys grabbing her buttocks, being scratched with staples outside of school, having her back and shoulders snapped with rubber bands and being tripped. She further stated in police reports that the boys tried to get her to "flash" them, used a laser devise on her breasts and genitals, threw water on her, shoved pencils up her genitals, hit her with a helmet, grabbed her breasts, used a shocking device on her breasts and shoulders, and attempted to remove her pants.

Courtney Everett did not call names or do anything in reaction to the harassment that was directed at her.

Heather Bruning stated in the police reports that the boys grabbed her chest, gave her titty twisters, lifted up her skirt, attempted to rip off her shirt, snapped rubber bands on her buttocks, tried to cut her neck with staples, spat upon her, pulled her hair, shocked her neck and breasts with a shocking device, humped her, threw spitballs at her, put their hands down their pants and then put their hands in her face, shoved pencils and pens up her genitals and buttocks, put their hands on the seat of her chair when she sat down, pushed her on ice to see her skirt go up, gave her wedgies, pointed lasers at her and sometimes touched her body where the lasers went, bit her breasts, and called her whore, lesbo, camel toe, pussy, wrinkle ass, pointy titties, and milf. In addition, Heather stated in police reports that the boys tripped and kicked her, grabbed her buttocks, slid their hands under her skirt, put pencils under her locker door so it locked, tried to remove her pants, threw pop or water down or up her skirt, spit water in her face at the water fountain, shoved her head down toward the boys' genitals, and tried to make her "flash" them.

DeBolt met with Robin Bruning and several other parents in connection with these events. DeBolt had discussions with Jeff Crayer, the Carroll Chief of Police, and his assistant Mark Heino. Both Crayer and Heino reported to DeBolt that both the boys and girls were behaving inappropriately. Crayer and Heino indicated to DeBolt that the incidents between the boys and girls were "more than just a one-way street." In his first statement to DeBolt, Sgt. Fleecs told DeBolt: "John, I don't know which way to go with this. We've got kids here who have been playing together for quite some time, and they're not playing nicely." Defendant's App. at 130, DeBolt's Dep.at 41. DeBolt's conversations with the boys indicated that both the boys and the girls were engaging in

back and forth activities which were inappropriate. DeBolt did not know who was instigating the in-school incidents. In response to these charges, the school advanced one of the boys a grade level and moved him to high school.

Several classmates of Steven Kanealy have reported to Steven's parents that they claim to have seen Heather Bruning engage in inappropriate conduct toward Steven Kanealy. Area residents have told Steven Kanealy's parents that they claim to have seen Heather Bruning and her mother, Robin Bruning, driving by the Kanealy residence since the time of the acts alleged in this lawsuit. Area residents have told Steven Kanealy's parents that they claim to have seen Heather Bruning and her friends laughing and pointing while walking by the Kanealy residence. Area residents have also told Steven Kanealy's parents that they claim to have seen Heather Bruning and Robin Bruning following Steven Kanealy in their car, sometimes with the headlights off, and at time shouting profanities and making obscene gestures.

During eighth grade, Heather Bruning experienced what she describes as similar inappropriate conduct from an expanded group of boys, not just Steven Kanealy, JL, or CB, but did not report any of their names to school officials. Rachael Dixon experienced what she describes as similar inappropriate conduct from other students in the school not connected with this case, including JD, who grabbed her breasts and buttocks, and KH, who kicked her in the buttocks. Prior to commencement of the lawsuit, Dixon did not report any of these individuals to school officials, such as Leona Hoth, Ethel Watson, or Rob Cordes. Rachael Dixon remains friends with KH. Heather Bruning stated in her deposition that she felt that some of the boys, J.L. and C.B., were victims of harassment.

No criminal charges were filed by the police against the girls and they never had a probationary status. No one ever executed a sexual harassment complaint against Heather Bruning, Rachael Dixon, or Courtney Everett with the Iowa Civil Rights

Commission.

Leona Hoth believed that the plaintiffs complained about the sexual harassment because they did not feel comfortable with what was happening. Hoth never heard any facts from anyone that would lead her to conclude that the sexual harassment complained of by the plaintiffs was something that the plaintiffs wanted or welcomed. Hoth knew that Rachael Dixon and others complained of sexual harassment in the spring of 2003. Hoth was shocked at the allegations she heard, as reported to her by the guidance counselor. Both Hoth and the guidance counselor thought the allegations were serious.

On December 23, 2003, Steven Kanealy and Heather Bruning had a reciprocal no-contact order entered against both of them. During the hearing on the no-contact order, Steven Kanealy's mother, Kendra Kanealy, reported that Heather Bruning and her friends were harassing Steven at school. During the hearing on the no-contact order, Steven Kanealy reported that Heather Bruning and her friends would call him names such as "pencil dick."

On December 8, 2004, Carroll's newspaper, the Daily Times Herald, printed a story about this lawsuit. On December 10, 2004, the Des Moines Register also printed an article about this case. On December 24, 2004, Trullinger told DeBolt that he was "upset over the whole situation" because one of the boys "had been ostracized from his peers at school, that the girls were telling rumors to other people so that they would not like him. . ." Plaintiffs' App. at 7, DeBolt's Dep.at 33.

Defendant DeBolt stated on December 28, 2004, in an article in the Daily Times Herald that "he believed some boys connected to the case were themselves victims of harassment by girls," that "I really feel in some ways the girls were just as much at fault. They were just playing back and forth." DeBolt additionally stated that "[t]here was a lot of back and forth grabbing, hitting, twisting-different inappropriate behavior." DeBolt

provided his comments to the press only after the girls had consented to tell what happened to the media. DeBolt admits that the girls referred to in the article are plaintiffs Heather Bruning, Rachael Dixon, and Courtney Everett. The article that included DeBolt's statements did not appear in the "opinion" or "letters to the editors" sections of the paper. A reporter, as opposed to an editor, wrote the article. The Daily Times Herald is a regular, general circulation newspaper, not a magazine or pamphlet. The professed sources of DeBolt's information for his newspaper statements included Trullinger, Cordes, Hoth, Carroll Chief of Police Jeff Cayler, Carroll Assistant Police Chief Mark Heino and others. DeBolt claims that he relied heavily on Trullinger with regard to the investigation of the harassment claims at issue in this litigation. DeBolt had no relevant personal contact with the plaintiffs prior to the date of the article in which his statements appeared.

As a juvenile court officer, DeBolt had access to the police reports and the police file at the time of his statements to the press. Police reports show that the plaintiffs' and other girls' mothers had just found out that their daughters had been subjected to sexual and verbal abuse by some of the boys for over a year when the girls came to the police station. The police report further states that the sexual and verbal harassment was brought to the school board's attention but that nothing was done about it. From reading the police reports, DeBolt would have known that one boy, JL, "admitted to doing several different things that the girls had written in their statements. He admitted to giving titty twisters at school, shoving pens and pencils up the girls' private areas, spitting at and around the girls, grabbing the girls' private areas, rubbing condoms in the faces of the girls, cutting others with staples, putting his hands up [a girl's] shirt, snapping rubber bands at the girls, punching [a girl] in the face, wipe [sic] hands on their dicks and wipe them on girls' faces, and trying to finger [a girl] in the genital area when she said no." Plaintiffs' App. at 142-43, police report at RBC 0121. DeBolt would also have known that another boy admitted

to doing "titty twisters" and stated that a third boy "did most of the stuff." Plaintiffs' App. at 144, police report at RBC 0123.

Plaintiffs have sued DeBolt for slander based on statements that appeared in the December 28, 2004, edition of the Daily Times Herald. Those alleged slanderous statements are: (1) that DeBolt believes "some boys connected with the case were themselves victims of harassment by girls"; (2) that DeBolt felt that the behaviors between the boys and girls were not one-sided and that "in some ways the girls were as much at fault. They were playing back and forth"; and, (3) that "there was a lot of back and forth grabbing, hitting, twisting—different inappropriate behavior." Police Chief Cayler is quoted in the same article saying that "the parents never approached" the police regarding any in-school incidents.

Plaintiff Heather Bruning knew DeBolt before the incidents at the center of this lawsuit. He was the state official with whom she dealt after she was cited for public intoxication. Heather Bruning testified in her deposition that DeBolt treated her fairly during that episode. She believes that based on that event that DeBolt neither dislikes her nor is he "out to get her."

Dennis Bruning, Heather's father, has had only professional conversations with DeBolt regarding unrelated juvenile court matters with Heather Bruning and Dennis Bruning's son, but has never spoken with DeBolt about this lawsuit. James Everett does not know DeBolt. Joey Dale Everett, Courtney Everett's mother, had never met DeBolt before October 2003, when she met with him to discuss the court filing.

Agnes Kuhlman knows DeBolt personally because of her employment in law enforcement. Agnes Kuhlman knows of no reason why DeBolt would dislike her or intentionally hurt her or her daughter, Rachael Dixon. Dixon has never seen or met DeBolt.

Heather Bruning and two other plaintiff students gave interviews to the Des Moines television news media at the same time the lawsuit was filed. The interviews were done with the consent of their parents and plaintiffs' counsel. DeBolt's statements about Heather Bruning appeared in the newspaper after she had been on television. DeBolt characterized this media coverage as "a big television media campaign." After the television coverage, DeBolt received calls from parents wanting to know if it was safe for their children to attend school.[1] DeBolt expressed his opinion to those callers that it was safe for their children to attend school. DeBolt was of the opinion that he and his liaison officer had done everything they could to make sure the school was a safe environment. Newspaper reporter Doug Bern approached DeBolt after television news reporting of this

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[1] Plaintiffs object to the portion of defendant DeBolt's Statement of Undisputed Facts which contain this fact on the ground that defendant DeBolt has violated Local Rule 56.1 by not including the affidavit of the parents who called DeBolt. Local Rule 56.1 provides in pertinent that:

> Each individual statement of material fact must be concise, numbered separately, and supported by references to those specific pages, paragraphs, or parts of the pleadings, depositions, answers to interrogatories, admissions, exhibits and affidavits that support the statement, with citations to the appendix.

LOCAL RULE 56.1. The court concludes that defendant DeBolt has satisfied this rule by directing the court's attention to that portion of defendant DeBolt's deposition testimony which supports this factual assertion. Plaintiffs make identical objections to other portions of defendant DeBolt's Statement of Undisputed Facts where defendant DeBolt has not included an affidavit of both parties to a conversation or event. Because defendant DeBolt has, on each such occasion, directed the court's attention to portions of the record which support the factual statement contained in defendant DeBolt's Statement of Undisputed Facts, these objections are overruled.

lawsuit. Bern had no appointment when he stopped in to see DeBolt at the courthouse in Carroll, Iowa. DeBolt states that he gave the interview to Bern because he felt it was necessary that parents know it was safe for their children to attend the school in light of what he viewed to be an extensive media campaign that indicated that it was not. This was not the first time that DeBolt had talked to the press, but it was the first time he had talked to the press regarding this case. He has since publicly commented on other cases. DeBolt's position allows him to speak in general terms on almost any topic with the press. DeBolt admits that it is not a requirement of his job to give statements to the press. DeBolt was giving a voluntary statement to the press. No superior of DeBolt's ever told him to talk to the press concerning this case. After DeBolt was sued in this case, his superiors instructed him not to talk to the press about this case.

After the newspaper article appeared with DeBolt's comments, the Everett family decided that they would not remain in Carroll. The Everett family has moved to Lake City, Iowa, and Courtney Everett is now attending school there. In Joey Everett's estimation, her daughter, Courtney, has "bloomed" since leaving the Carroll Community School District.

II. LEGAL ANALYSIS

A. Standards For Summary Judgment

Rule 56 of the Federal Rules of Civil Procedure provides that a defending party may move, at any time, for summary judgment in that party's favor "as to all or any part" of the claims against that party. FED. R. CIV. P. 56(b). "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED.

R. CIV. P. 56©. As this court has explained on a number of occasions, applying the standards of Rule 56, the judge's function at the summary judgment stage of the proceedings is not to weigh the evidence and determine the truth of the matter, but to determine whether there are genuine issues for trial. *Quick v. Donaldson Co.*, 90 F.3d 1372, 1376-77 (8th Cir. 1996); *Johnson v. Enron Corp.*, 906 F.2d 1234, 1237 (8th Cir. 1990). In reviewing the record, the court must view all the facts in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences that can be drawn from the facts. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Quick*, 90 F.3d at 1377 (same).

Procedurally, the moving party bears "the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record which show lack of a genuine issue." *Hartnagel v. Norman*, 953 F.2d 394, 395 (8th Cir. 1992) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)); *see also Rose-Maston v. NME Hosps., Inc.*, 133 F.3d 1104, 1107 (8th Cir. 1998); *Reed v. Woodruff County, Ark.*, 7 F.3d 808, 810 (8th Cir. 1993). When a moving party has carried its burden under Rule 56©, the party opposing summary judgment is required under Rule 56(e) to go beyond the pleadings, and by affidavits, or by the "depositions, answers to interrogatories, and admissions on file," designate "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); *Celotex*, 477 U.S. at 324; *Rabushka ex. rel. United States v. Crane Co.*, 122 F.3d 559, 562 (8th Cir. 1997), *cert. denied*, 523 U.S. 1040 (1998); *McLaughlin v. Esselte Pendaflex Corp.*, 50 F.3d 507, 511 (8th Cir. 1995); *Beyerbach v. Sears*, 49 F.3d 1324, 1325 (8th Cir. 1995). An issue of material fact is "genuine" if it has a real basis in the record. *Hartnagel*, 953 F.2d at 394 (citing *Matsushita Elec. Indus. Co.*, 475 U.S. at 586-87). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment," *i.e.*, are

"material." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Beyerbach*, 49 F.3d at 1326; *Hartnagel,* 953 F.2d at 394.

If a party fails to make a sufficient showing of an essential element of a claim with respect to which that party has the burden of proof, then the opposing party is "entitled to judgment as a matter of law." *Celotex Corp.*, 477 U.S. at 323; *In re Temporomandibular Joint (TMJ) Implants Prod. Liab. Litig.*, 113 F.3d 1484, 1492 (8th Cir. 1997). Ultimately, the necessary proof that the nonmoving party must produce is not precisely measurable, but the evidence must be "such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Allison v. Flexway Trucking, Inc.*, 28 F.3d 64, 66 (8th Cir. 1994). The court will apply these standards to DeBolt's Motion for Summary Judgment.

B. DeBolt's Arguments

1. Truth of DeBolt's statements

Defendant DeBolt initially contends that he is entitled to summary judgment on plaintiffs' slander claims against him because his statements were the truth. Plaintiffs contest this assertion, countering that substantial questions of fact exist regarding the veracity of DeBolt's statments so as to preclude the granting of summary judgment in this case. Before addressing the parties' various arguments on this point, the court must first identify the legal requirements for a defamation claim under Iowa law.

a. Defamation under Iowa law

As this court has explained in a number of decisions, defamation under Iowa law consists of the "twin torts" of "libel" and "slander," where "libel" is defined as malicious publication, expressed either in printing or in writing, or by signs and pictures, tending to injure the reputation of another person or to expose the person to public hatred, contempt,

or ridicule, or to injure the person in the maintenance of the person's business, and "slander" is defined as oral publication of defamatory material. *Park v. Hill*, 380 F. Supp. 2d 1002, 1015 (N.D. Iowa 2005); *Lyons v. Midwest Glazing, L.L.C.*, 235 F. Supp.2d 1030, 1043-44 (N.D. Iowa 2002); *accord Kiesau v. Bantz*, 686 N.W.2d 164, 174 (Iowa 2004); *Barreca v. Nickolas*, 683 N.W.2d 111, 116 (Iowa 2004); *Delaney v. International Union UAW Local No. 94*, 675 N.W.2d 832, 839 (Iowa 2004); *Theisen v. Covenant med. Ctr, Inc.*, 636 N.W.2d 74, 83 (Iowa 2001); *Johnson v. Nickerson*, 542 N.W.2d 506, 510 (Iowa 1996); *Lara v. Thomas*, 512 N.W.2d 777, 785 (Iowa 1994).

The Iowa Supreme Court reiterated the rights and policies protected by a "defamation" claim in its *Kiesau* decision, observing:

> As we have previously explained,
>
> > [t]he law of defamation embodies the public policy that individuals should be free to enjoy their reputation unimpaired by false and defamatory attacks. An action for defamation or slander is based upon a violation of this right.
> >
> > The gravamen or gist of an action for defamation is damage to the plaintiff's reputation. It is reputation which is defamed, reputation which is injured, and reputation which is protected by the law of defamation. Defamation is an impairment of a relational interest; it denigrates the opinion which others in the community have of the plaintiff and invades the plaintiff's interest in his reputation and good name. A cause of action for defamation is based on the transmission of derogatory statements, not any physical or emotional distress to plaintiff which may result. Defamation law protects interests of personality, not of property.
>
> *Schlegel v. Ottumwa Courier*, 585 N.W.2d 217, 221 (Iowa 1998) (quoting 50 Am. Jur. 2d Libel and Slander § 2, at 338-39 (1995)).

Kiesau, 686 N.W.2d at 174-75.

Here, the parties are operating under the assumption that this case involves slander because plaintiffs seek compensation for DeBolt's oral statements to the Daily Times Herald.[2] In the face of no contentions to the contrary, the court will proceed under the same assumption.

b. Requirements for proof

In order to prevail on a defamation claim, a plaintiff must ordinarily show more than "'hurt feelings.'" *Kiesau*, 686 N.W.2d at 175 (quoting *Johnson*, 542 N.W.2d at 513, in turn citing 53 C.J.S. *Libel and Slander* at § 5)). Rather, a plaintiff must ordinarily prove that the statements were made with malice, were false, and caused damage. *Lyons*, 235 F. Supp. 2d at 1044; *Kiesau*, 686 N.W.2d at 175 ("In cases of libel per quod, 'a plaintiff must ordinarily prove some sort of cognizable injury, such as injury to reputation.' *Johnson [v. Nickerson]*, 542 N.W.2d [506,] 513 [(Iowa 1996)] (citing 53 C.J.S. Libel and Slander § 6 (1987))."); *Barreca v. Nickolas*, 683 N.W.2d 111, 116 (Iowa 2004) (noting that defamation ordinarily requires proof of actual damages); *Schlegel*, 585

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[2] This view, however, is not supported by the authors of the Restatement, who observe:

> A publication of a libel may be made by an oral communication that is intended to be, and is, reduced to writing ··· [such as] when a statement is given orally to a newspaper reporter and is published in the paper···· [T]he oral communication takes on the character of libel because of the intended and actual embodiment in permanent form.

RESTATEMENT (SECOND) OF TORTS § 568 cmt.f (1977). Although the Iowa Supreme Court often follows the Restatement in defamation law, *see Barreca*, 683 N.W.2d at 118, that court has not yet had the opportunity to consider this section of the Restatement.

N.W.2d at 222 (explaining that these are the elements of proof for defamation *per quod*).[3] Although statements constituting "defamation *per se*" are actionable without proof of malice, falsity, or special harm, *see Mercer v. City of Cedar Rapids*, 104 F. Supp. 2d 1130, 1170 (N.D. Iowa 2000) (citing the court's prior cases and Iowa cases); *accord Kiesau* 686 N.W.2d at 175 ("In statements that are [defamatory] *per se*, falsity, malice, and injury are presumed and proof of these elements is not necessary."); *Barreca*, 683 N.W.2d at 116 (same), words are defamatory *per se* only if they are of such a nature, whether true or not, that the court can presume as a matter of law that their publication will have defamatory effect. *Id.*; *Barreca*, 683 N.W.2d at 116. Among such statements are defamatory imputations affecting a person in his or her business, trade, profession, or office. *Id.* Also, "'[a]n attack on the integrity and moral character of a party is [defamatory] *per se*.'" *Kiesau*, 686 N.W.2d at 175 (quoting *Wilson v. IBP, Inc.*, 558 N.W.2d 132, 139 (Iowa 1996)); *see generally Barreca*, 683 N.W.2d at 116 (noting that "[o]ver the years, we have characterized a variety of statements as slander per se").

c. Substantial truth standard

Iowa cases have long held that "[t]ruth is a complete defense to defamation." *Delaney v. International Union UAW Local No. 94*, 675 N.W.2d 832, 843 (Iowa 2004) (citing *Huegerich v. IBP, Inc.*, 547 N.W.2d 216, 221 (Iowa 1996)); *Marks v. Estate of Hartgerink*, 528 N.W.2d 539, 545 (Iowa 1995); *Hovey v. Iowa State Daily Publ'n, Inc.*,

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[3]When a "private figure" claims defamation by a media defendant, the private plaintiff does not have to prove "actual malice," but must only establish "that the media defendant negligently breached a professional standard of care in order to recover actual damages." *Johnson*, 542 N.W.2d at 511. "Public figure" plaintiffs, on the other hand, must *always* prove "actual malice" and must do so by "clear and convincing evidence," not merely by the greater weight of the evidence, to prevail on a defamation claim against any defendant, media or otherwise. *Kiesau*, 686 N.W.2d at 177.

372 N.W.2d 253, 255 (Iowa 1985); *Cowman v. LaVine*, 234 N.W.2d 114, 125 (Iowa 1975); *Vojak v. Jensen*, 161 N.W.2d 100, 108 (Iowa 1968); *McCuddin v. Dickinson*, 230 Iowa 1141, 1142, 300 N.W. 308, 309 (1941); *Children v. Shinn*, 168 Iowa 531, 150 N.W. 864, 869 (1915). Thus, a defamation claim may be defeated by proof that the statements were true. Moreover, the Iowa Supreme Court has recognized substantial truth as a defense in a defamation action. *See Behr v. Meredith Corp.* 414 N.W.2d 339, 342 (Iowa 1987); *Hovey*, 372 N.W.2d at 255-56; *see also Marks*, 528 N.W.2d at 545; *Campbell v. Quad City Times*, 547 N.W.2d 608, 610 (Iowa Ct. App. 1996). Under the substantial truth standard, defendants are not required to establish the literal truth of every detail of the publication, as long as the "sting" or "gist" of the defamatory charge is substantially true. *Hovey*, 372 N.W.2d at 255. As the Iowa Supreme Court has explained:

> The gist or sting of the defamatory charge, according to one court, is "the heart of the matter in question--the hurtfulness of the utterance." *Vachet v. Central Newspapers, Inc.*, 816 F.2d 313, 316 (7th Cir. 1987). We determine the gist or sting by "look[ing] at the highlight of the [publication], the pertinent angle of it, and not to items of secondary importance which are inoffensive details, immaterial to the truth of the defamatory statement." *Id.* (newspaper articles falsely stated plaintiff was arrested on a warrant; method of arrest held immaterial to the truth of defamatory statement that plaintiff was arrested and charged with harboring suspected rapist of an elderly woman).

Behr, 414 N.W.2d at 342. With these principles in mind, the court turns to DeBolt's statements under attack to determine whether they are substantially true as a matter of law. The court will take up each of DeBolt's three statements seriatim.

(i) "Victims" statement

The first allegedly slanderous statement is as follows: "DeBolt also said that he

believed some boys connected to the case were themselves victims of harassment by girls." The court notes that in this statement, DeBolt did not refer by name to any particular boys, other than to note that they were "connected" to this case. More important, DeBolt did not refer to the three girls who are plaintiffs in this action but, instead, referred only to "girls." The importance of this non-specific term is that any harassing actions by juvenile females directed toward the three juvenile males at the center of this case may be considered in determining whether DeBolt's statement is substantially true. Uncontested facts in the summary judgment record here reveal: that Heather Bruning occasionally hit Steven Kanealy in his crotch area; that Rachael Dixon would occasionally hit Steven Kanealy; that Rachael Dixon would kick the boys in their genital area; that a juvenile girl, KL, gave Steven Kanealy "titty twisters"; that Heather Bruning would place her foot in Steven Kanealy's crotch area; that Heather Bruning hit the boys in their genitals and called them names such as "short dick", "pencil dick" and "tiny dick"; that Steven Kaneally received numerous harassing telephone calls from several girls; and that Steven Kanealy was stalked by Heather Bruning. Given this record, which includes actions by plaintiffs Heather Bruning and Rachael Dixon, as well as KL and other non-party females, directed at Steven Kanealy and the other two juvenile males at the center of this dispute, the court concludes that DeBolt's statement was substantially true. Therefore, the court grants this portion of DeBolt's Motion For Summary Judgment.

(ii) "Just as much at fault" statement

DeBolt's second allegedly slanderous statement is that he felt that the behaviors between the boys and girls were not one-sided and that "I really do feel in some ways the girls were as much at fault. They were playing back and forth." The court concludes that defendant DeBolt has not established his defense of truth as a matter of law with regard to this statement. The record discloses that one of the boys, JL, admitted to the following:

giving titty twisters at school, shoving pens and pencils up the girls' private areas, spitting at and around the girls, grabbing the girls' private areas, rubbing condoms in the faces of the girls, cutting other girls with staples, putting his hands up one girl's shirt, snapping rubber bands at the girls, punching a girl in the face, wiping his hands on his "dick" and then on the girls' faces, and trying to "finger" a girl in her genital area when she refused his advances. Plaintiff Courtney Everett stated in police reports that she had been subjected to being called a slut and a whore, having bruises from titty twisters and being kicked, boys grabbing her buttocks, being scratched with staples outside of school, having her back and shoulders snapped with rubber bands and with being tripped. She further stated in these police reports that the boys tried to get her to "flash" them, used a laser device on her breasts and genitals, threw water on her, shoved pencils up her genitals, hit her with a helmet, grabbed her breasts, used a shocking device on her breasts and shoulders, and attempted to remove her pants. The record further discloses that Courtney Everett did not call the boys names or do anything in reaction to the harassment directed at her. Given this record, Courtney Everett could not be considered to be equally culpable for the harassing conduct as the boys. Moreover, the girls assert that all of their actions against the boys were provoked by the boys' initial actions against them and done in an attempt to halt the boys' abusive conduct toward them. Given this record, the court cannot conclude as a matter of law that DeBolt's statement was substantially true. Rather, the court concludes that a genuine issue of material fact has been generated as to whether DeBolt's statement was substantially true. Therefore, this portion of DeBolt's Motion For Summary Judgment is denied.

(iii) "Back and forth" statement

DeBolt's final allegedly slanderous statement is that "there was a lot of back and forth grabbing, hitting, twisting—different inappropriate behavior." The uncontested record before the court is that during many of Heather Bruning's visits to Steven Kanealy's home, Steven would touch Heather's breasts. In response to Steven's expressed desire to bite Heather's chest, Heather "flashed him" by lifting up her shirt. Heather also would hit Steven in the crotch in response to him hitting her in the crotch. This would result in Steven giving Heather a titty twister or doing something worse. One time Steven lifted Heather's skirt so high that her whole buttocks was visible. Heather reacted to this action by pushing Steven. At school, Steven Kanealy would grab Heather's breasts and her typical reaction would be to hit him in the arm or tell him to knock it off. The record also reveals that Steven Kanealy would occasionally hit Rachael Dixon and she would respond in kind. If Steven Kanealy would not stop hitting Dixon, Dixon would eventually respond by kicking him in his groin area. Rachael Dixon kicked the boys in the groin area when they did something to her but before resorting to hitting back, Dixon would first give a dirty look, try to avoid the boy, or maybe say "knock it off" or "what did you do that for." If the action happened again, Dixon would again give the boy a dirty look and state to leave her alone. If the boy persisted in his actions, she would kick back at the boy in the boy's groin area. The record also reveals an incident that took place in the home of AA during the summer of 2003. During this incident, which involved two of the boys tying Heather Bruning and another girl to a bed, the girls responded by tying the boys to the bed as well. The record further shows that, during lunch at school, if one of the boys put his foot on Heather Bruning's crotch, she would respond by putting her foot on his crotch area. Based on this record, the court concludes that DeBolt's statement, that "there was a lot of back and forth grabbing, hitting, twisting—different inappropriate behavior",

was substantially true. Therefore, the court also grants this portion of DeBolt's Motion For Summary Judgment.

2. Protected opinions

Alternatively, defendant DeBolt contends that his statements were not factual claims, but instead were opinions protected by the First Amendment. The Eighth Circuit Court of Appeals explained that in the context of the First Amendment, whether a statement is one of fact or opinion is a question of law to be decided by the court. *Janklow v. Newsweek, Inc.*, 788 F.2d 1300, 1305 n.7 (8th Cir.) (en banc), *cert. denied*, 479 U.S. 883 (1986); *accord Secrist v. Harkin*, 874 F.2d 1244, 1248 (8th Cir. 1989); *Jones v. Palmer Communications, Inc.*, 440 N.W.2d 884, 891 (Iowa 1989) (citing *Janklow*, 788 F.2d at 1302-03). The Iowa Supreme Court has adopted the following three factors in determining whether a statement is fact or opinion: 1) the precision and specificity of the statement; 2) the verifiability of the statement; and 3) the literary context in which the statement was made. *Jones*, 440 N.W.2d at 891. The first two "factors recognize that if a statement is precise and easy to verify, it is likely the statement is fact." *Id.* With respect to the third factor identified above, the Iowa Supreme Court has observed:

> The third factor is the "literary context" in which the disputed statement was made. Related to the literary context of the disputed statement is the "social context," which "focuses on the category of publication, its style of writing and intended audience." [*Janklow*, 788 F.2d] at 1303. We also consider the "public context" or political arena in which the statements were made. *Id.*; *Ollman*, 750 F.2d at 1002-05 (Bork, Wilkey, Ginsburg, & MacKinnon, JJ., concurring). In considering these factors, the statement must be taken as part of a whole, including the tone of the broadcast and the use of cautionary language. *Janklow*, 788 F.2d at 1302.

Jones, 440 N.W.2d at 891-92.

The court turns to applying these factors to DeBolt's statement, "I really do feel in some ways the girls were as much at fault. They were playing back and forth." The court commences its analysis with the question of precision. The court concludes that this statement is not precise because it involves the determination of fault, a very slippery determination. In addition, the court notes that DeBolt qualified his declaration with the phrase "in some ways" but did not disclose or otherwise specify the conduct he was referring to by this phrase. As the Eighth Circuit Court of Appeals pointed out in its *Janklow* decision: "It is difficult to call a vague or imprecise statement a fact." *Janklow*, 788 F.2d at 1302. Moreover, the statement does not identify any particular action on any particular day by any particular actor. As a result, with respect to the second factor, verifability, the court finds that the statement is difficult to verify because of its indefiniteness. The court also recognizes that the statement was made to a newspaper reporter, in which DeBolt expressed his feelings about how well the school district had responded to the alleged sexual abuse at the center of the allegations in this lawsuit, and therefore must be considered in the context of a newsworthy event-the filing of a lawsuit alleging the sexual abuse of students in a public school. *See Kiesau*, 686 N.W.2d at 177 (noting "literary context" "includes the 'social context,' which focuses on the category of the publication, its style and intended audience, and the 'political context' in which the statement was made"); *Jones*, 440 N.W.2d at 891 (same). The court concludes that, as a result, the context of DeBolt's statement weighs slightly in favor of a finding of opinion. Accordingly, the court concludes that all three factors weigh in favor of a finding that DeBolt's statement is opinion. DeBolt's disputed statement is imprecise, unverifiable, and presented in a forum concerning the school district's response to sexual abuse allegations in the school. Thus, under the totality of the circumstances, the court finds DeBolt's statement is a statement of opinion, and not fact, and is not actionable. Therefore, the

court also grants this portion of DeBolt's Motion For Summary Judgment.

III. CONCLUSION

For the foregoing reasons, DeBolt's Motion For Summary Judgment is granted.

IT IS SO ORDERED.

DATED this 3rd day of May, 2006.

Mark W. Bennett

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA